State of Wyoming



Department of Health

Rules and Regulations for Maternal and Child Health

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STATEMENT OF REASONS

The Department of Health is replacing the current Rules and Regulations to conform to changes occurring within the Wyoming Department of Health since the inception of the Rules and Regulations. These changes will impact the budget, eligibility for clients and promote better utilization of programs within the Department of Health.

TABLE OF CONTENTS

CHAPTER I

GENERAL PROVISIONS

| Section No. | Subject | Page |
|-------------|--|------|
| 1 | Authority | 1 |
| 2 | Purpose and Applicability | 1 |
| 3 | Severability | 1 |
| 4 | Definitions | 1 |
| 5 | Changes or Restrictions in Service Reimbursement | 5 |
| 6 | Payments of Program Benefits | 5 |
| | | |
| | CHAPTER II | |

ELIGIBILITY REQUIREMENTS

| Section No. | <u>Subject</u> | <u>Page</u> |
|-------------|--|-------------|
| 1 | Statement of Purpose | 1 |
| 2 | Eligibility | 1 |
| 3 | Application Process/Residency Requirements | 1 |
| 4 | Financial | 2 |
| 5 | Incomplete Applications | 3 |
| 6 | Reapplication for Benefits | 3 |
| 7 | Medical Eligibility Statement of Purpose | 4 |
| | | |

CHAPTER III

DENIAL OF APPLICATION; MODIFICATION, SUSPENSION, OR TERMINATION OF CLIENT BENEFITS

| Section No. | <u>Subject</u> | <u>Page</u> |
|-------------|---|-------------|
| 1 | Statement of Purpose | 1 |
| 2 | Procedure for the Denial of Applications; Modification, | 2 |
| | Suspension, or Termination of Benefits | |

CHAPTER IV MATERNAL AND CHILD HEALTH PROGRAM HEARING PROCESS

| Section No. | <u>Subject</u> | <u>Page</u> |
|-------------|--|-------------|
| 1 | Statement of Purpose | 1 |
| 2 | Notice of Contestant of Right to a Hearing | 1 |
| 3 | Administrative Hearing Availability | 2 |
| 4 | Request for Hearing | 2 |
| | | |

| 5 | Maintaining Services | 3 |
|----|----------------------------------|----|
| 6 | Local Conference | 3 |
| 7 | Applicability | 4 |
| 8 | Notice of Hearing | 4 |
| 9 | Procedural Rights of Contestants | 5 |
| 10 | Failure to Appear | 5 |
| 11 | Discovery | 5 |
| 12 | Prehearing Conference | 6 |
| 13 | Informal Disposition | 6 |
| 14 | Hearing Officer | 6 |
| 15 | Evidence and Testimony | 7 |
| 16 | Representation | 8 |
| 17 | Order of Procedure | 8 |
| 18 | Decisions | 9 |
| 19 | Appeals | 10 |
| 20 | Transcripts and Records | 10 |
| | | |

RULES AND REGULATIONS FOR MATERNAL AND CHILD HEALTH

CHAPTER I

GENERAL PROVISIONS

Section 1. Authority.

These rules and regulations are promulgated by the Community and Family Health Division pursuant to its authority under the general provision of W.S. 9-2-106(a)(vii).

Section 2. Purpose and Applicability.

- (a) These rules and regulations are adopted to implement the authority of Wyoming Children's Special Health (CSH) Program, Maternal High Risk (MHR) Program, and Newborn Intensive Care (NBIC) Program, Community and Family Health Division to:
- (b) Provide family-centered, community-based, culturally competent, coordinated care, case management and limited financial assistance to maternal and child population, including children with special need:
- (c) The Department may issue Provider Manuals, Provider Bulletins, or both, to interpret the provisions of these rules and regulations. Such Provider Manuals and Provider Bulletins shall be consistent with and reflect the policies contained in these rules and regulations. The provisions contained in Provider Manuals or Provider Bulletins shall be subordinate to the provisions of these rules and regulations.
- (d) The incorporation by reference of any external standard is intended to be the incorporation of that standard as it is in effect on the effective date of these rules and regulations.

Section 3. <u>Severability</u>.

If any portion of these rules is found to be invalid or unenforceable, the remainder shall continue in effect.

Section 4. Definitions.

The following definitions shall apply in the interpretation and enforcement of these rules. Where the context in which words are used in these rules indicates that such is the intent, words in the singular number shall include the plural and visa versa. Throughout these rules gender pronouns are used interchangeably, except where the context dictates otherwise. The drafters have attempted to utilize each gender pronoun in equal numbers, in random distribution. Words in each gender shall include individuals of the other gender.

- (a) "Administrator" means the Administrator of the Community and Family Health Division.
- (b) "Adverse Action" means a termination, suspension, or reduction of benefits or covered services. "Adverse Action" does not include the denial of services because they are not covered services, or other issues about the scope of covered services. "
- (c) "Affidavit" means a written notarized statement of facts made voluntarily under oath.
- (d) "Aggrieved" means any applicant/client, participating facility, or provider who has been subject to an adverse action by the Community and Family Health Division.
- (e) "Appeal" means a Contestant's resort to district court after a final adverse agency determination or decision.
- (f) "Applicant" means a person whose written application for the MCH Programs has been submitted to Community and Family Health Division, but there has been no final determination of eligibility.
- (g) "Approved Facility" means a facility enrolled with Wyoming EqualityCare, which includes, but is not limited to an in-state or out-of-state inpatient/outpatient hospital facility e.g. laboratory and radiology.
- (h) "Approved Provider" means a provider enrolled with Wyoming EqualityCare and who has signed an agreement with MCH.
- (i) "Care Coordination" means case management of family-centered, community-based, culturally competent coordinated health care using a multi-disciplinary approach.
- (j) "Children's Special Health" (CSH) means a federally mandated program to assist in infrastructure building, gathering of data, and promoting policies to promote the health of the underserved children and youth with special health care needs.
- (k) "Approved Provider" means a person who is determined eligible for MCH programs.
- (I) "Complaint" means a written request in which a person requests a hearing. The written request (complaint) must include at minimum: name, address, telephone number, and the reason for the request, including the nature of the Division action, order, or determination being contested.
- (m) "Contestant" means the applicant/client, a facility, or representative who brings a complaint against the Division.

- (n) "Contested Case" means a disputed action taken by the Department involving eligibility, termination of eligibility, suspension of eligibility, denial of medical services, denial of payment for medical services, or reduction of services.
- (o) "Date of Action" means the intended date on which a termination, suspension, or reduction becomes effective.
- (p) "Date of Eligibility" means the date of acceptance to MCH for coverage of approved medical services for a specific diagnosis or treatment.
- (q) "Date of Service" means date or range of dates on which a service was provided.
- (r) "Department" means the Department of Health (WDH), its agent, designee, or successor.
- (s) "Designee" means the appointed agent of the Director or the Administrator having all the authority of the Director or the Administrator.
 - (t) "Director" means Director of the Department of Health.
 - (u) "Division" means the Community and Family Health Division (CFHD).
 - (v) "Excess Payments" means includes, but is not limited to:
 - (i) Overpayments;
 - (ii) Payments made as a result of system errors;
 - (iii) Payments for premiums or services furnished to a non-client;
 - (iv) Payments for non-covered services furnished to a client.
- (w) "Family Income" means the total amount of gross income reported from "family members", including child support, alimony, family benefits, retirement, Social Security (SSI, SSDI, or Survivors Benefits received), and any and all other income which includes dividends/interest, business income, donations, and real estate.
- (x) "Family Members" means the eligible client, parent(s), stepparent(s) or legal guardian(s), all minor children, and any dependent adult living in the house who are financially dependent upon the parent(s), stepparent(s) or legal guardian(s).
- (y) "Hearing" means a contested case being presented before a designated hearing officer.

- (z) "Hearing Officer" means any employee of the Department or other designated by the director to serve as the presiding officer at a hearing held under these rules. This person cannot be employed by with MCH or otherwise have independent knowledge of the pending action.
- (aa) "Maternal High Risk Program" (CSH) means a program to provide limited financial assistance to a high risk pregnant woman receiving tertiary care as ordered by her provider(s), which requires a higher level of care for a pregnancy than is available within a Wyoming hospital. This may also include financially eligible adults who need genetic counseling.
 - (bb) "MCH Program" means the Children's Special Health (CSH), Newborn Intensive Care (NBIC) or Maternal High Risk (MHR) Programs.
- (cc) "Medical Treatment" means medical or surgical services; limited medical equipment or devices provided to the client.
- (dd) "Newborn Intensive Care Program" (NBIC) means a program to provider limited financial assistance to a newborn who requires tertiary care related to intensive respiratory support or a diagnosis of congenital anomalies.
- (ee) "Notice of Action" means a written statement informing the contestant of the action the Department intends to make, the reason(s) for the intended action, the specific regulation(s) that support the action intended, an explanation of the client's right to request a hearing, and an explanation of the circumstances under which a continuation of benefits may be maintained pending a hearing.
- (ff) "Prior Authorization" means the approval of a request to provide a specific service before the provision of the service.
 - (gg) "Program Manager" means the administrator(s) of MCH Programs.
 - (hh) "Qualified Alien" means a lawfully admitted alien is qualified if he or she:
- (i) Was admitted to the United States as a refugee under Section 207 of the Immigration and Naturalization Act ("INA");
 - (ii) Has been granted asylum under Section 208 of the INI;
- (iii) Is eligible for deportation but the deportation is being withheld under sections 241(b)(3) or 243(h) of the INI;
- (iv) Is a lawfully admitted, permanent resident under the INA and who has for five (5) years or more, lived in the United States;
- (v) Is lawfully residing within the State and is the spouse or dependent child of a veteran or active member of the United States military; or

- (vi) Is a member of another group for which citizenship is met pursuant to the Balanced Budget Act of 1997, which is incorporated by this reference.
- (ii) "Request for a Hearing" means a clear expression in writing by the contestant, or authorized representative, requesting an opportunity to present the case to a reviewing authority.
- (jj) "Resident" means a person who is living in the state with the intention of making a permanent home meeting residency criteria defined in Chapter II, Section 2. a (ii).
 - (kk) "Termination" means to remove a client from the program, or close the file.
 - (II) "Tertiary Care" means medical care at a level III medical facility.

Section 5. Changes or Restrictions in Service Reimbursement.

The MCH Section Programs may restrict or categorize service reimbursement to meet budgetary limitations.

- (a) Services will be prioritized based upon medical necessity, and funding availability.
- (b) In the event that the MCH Program's benefits must be reduced, they will be reduced in a manner that takes into consideration medical necessity and family financial eligibility.

Section 6. Payment of Program Benefits.

- (a) MCH programs are the payor of last resort following all other third party payors.
- (b) Payments are made directly to approved providers for covered services. No payments will be made to families.
- (c) Payment to approved providers is based on Wyoming EqualityCare rates with any applicable modifiers.
- (d) Total annual payment for services for any MCH Program eligible client will be capped.
 - (e) All services must be approved for payment.
 - (f) Payment is made through the MCH fiscal agent(s).
 - (g) Services provided prior to the MCH eligibility date will not be paid.
 - (h) No payment will be made unless required billing is received by MCH's

fiscal agent(s) within one (1) year from date of service.

- (i) Any recovery of money by the family through legal actions, third party payors or other liabilities, shall be paid to the state to the extent that the state has incurred expenses.
 - (j) Excess payments may be recovered.
- (k) Denial of non-covered services. The denial of services because they are not covered services is not an adverse action and the insured shall not be entitled to a reconsideration or administrative hearing.

CHAPTER II

ELIGIBILITY REQUIREMENTS

Section 1. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to establish the eligibility of applicants for MCH Program benefits.

Section 2. Eligibility.

- (a) An applicant will be eligible to receive MCH benefits when Program approval is given, after meeting the following requirements:
 - (i) Has made application through:
 - (A) A Public Health Nursing Field Office; or
 - (B) An MCH designated representative;
- (ii) Is a bona fide resident of Wyoming, and is actually present in the State. Documentation of residency may be requested;
 - (A) Is a U.S. citizen or qualified alien;
- (iii) Has provided family income data as requested by the Program for purposes of determining financial eligibility;
 - (iv) Has a medical condition(s) covered by one of the MCH programs.

Section 3. Application Process/Residency Requirements.

In making application, a parent/guardian must submit or have submitted the following documents:

- (a) MCH requires families to apply to EqualityCare or Kid Care (CHIP) at the time of their application and annual renewal. All applicants will be screened for benefits from other programs for which they may be eligible, and informed of potential eligibility. Parents must apply to all available payment resources prior to being eligible for MCH services.
- (b) A properly completed and signed original Application for Program Benefits.
- (c) If there is a question regarding residency, the following documents can be used as evidence of residency. Copies of any two (2) of the following documents would be considered acceptable:

- (i) Current, valid Wyoming driver's license, or an identification card with a current address and telephone number;
 - (ii) Current mortgage or rent payment receipts;
 - (iii) Current utility payment receipts;
 - (iv) Current, valid Wyoming EqualityCare card;
 - (v) Current employment/unemployment records; or
 - (vi) Current postal verification of address.

Section 4. Financial

- (a) The family's adjusted annual income shall be calculated by:
- (i) Totaling all cash receipts before taxes from all sources for a twelve month period. These sources include:
- (A) Wages, tips, salaries, and commissions before deductions (gross income).
- (B) Regular payments from Social Security, unemployment compensation, Workman's compensation, retirement, strike benefits, and training stipends.
- (C) Alimony, child support and family military allotments, or other regular support from an absent family member or someone not living in the household.
- (D) Payments towards household expenses from other adults living full or part-time in the household.
- (E) Private pensions, government employee pensions, and regular or annuity payments for all family members.
- (F) Dividends, interest, rents, royalties or periodic receipts from estates or trusts for all family members.
- (G) Funds received in the parent(s)/guardian(s) name, through donations, legal action, third party payor, or other sources.
 - (H) Savings above an established amount.
- (ii) Subtracting the allowable deductions from the total cash receipts. These expenses include:

- (A) Health insurance premiums paid for any family member in the household.
 - (B) Child support paid out.
- (b) Financial eligibility will be established by comparing the adjusted annual income and family size to a table based on a predetermined percent of the poverty level determined by the U.S. Secretary of Health and Human Services.
- (c) The Program may, at any time and at its discretion, require proof of claimed income and adjustments.
 - (d) An updated financial eligibility form will be required annually.
- (e) The parent or guardian agrees to give assignment of insurance benefits for MCH covered services to the specific MCH providers.
- (f) The parent or guardian has signed the application that all information given is true.
- (g) Minor applicants who are wards of the court (in Department of Family Services' custody) shall be considered to meet financial eligibility requirements.

Section 5. Incomplete Applications.

- (a) An application shall be deemed incomplete for any one of the following reasons:
 - (i) Failure to provide information requested on the application form;
 - (ii) Lack of supporting documents;
 - (iii) Lack of proper signature;
 - (iv) Lack of legal residency documentation; or
 - (v) Lack of financial documentation.
- (b) An incomplete application will be returned to either the MCH designated representative or the parent(s)/guardian(s) requesting completion.
- (c) If an application is incomplete, specific benefit eligibility will not be determined.

Section 6. Reapplication for Benefits

(a) To regain MCH Program benefits, a recipient must reapply in cases where eligibility has ended.

Section 7. <u>Medical Eligibility Statement of Purpose</u>.

- (a) Children's Special Health in Wyoming provides services for Children with Special Health Care Needs who have chronic conditions which may be rehabilitated. MHR/NBIC provides limited financial assistance to high risk pregnant women and/or infants receiving tertiary care as ordered by their provider(s).
- (i) The CSH Program provides services for Children with Special Health Care Needs such as congenital anomalies, cardiac problems, neurological difficulties, tumors, rehabilitation secondary to trauma or infectious disease, and other specific chronic conditions.
- (ii) MCH is not a health care provider. Each client is expected to have a primary care physician, obstetrician, or pediatrician to provide care.
- (iii) Case management of each client is done by the family and health care providers in conjunction with MCH.
- (iv) CSH may provide for diagnostic evaluation regarding conditions that may qualify for the Program. Following the initial diagnostic evaluation, a determination is made regarding medical eligibility.
- (v) MCH clients are treated by providers who are approved by MCH. Specific requirements for provider approval are available at the MCH State office.
- (vi) CSH Wyoming health care providers are given priority when equivalent care is available Wyoming,
- (vii) MCH coverage is only provided for those diagnoses for which the client has been determined to be medically eligible.
- (viii) MCH services shall be authorized by the Program before reimbursement is honored.
- (ix) Financial assistance through MCH is constrained by available funding. Services may be altered to reflect current resources available.

CHAPTER III

DENIAL OF APPLICATION; MODIFICATION, SUSPENSION, OR TERMINATION OF CLIENT BENEFITS

Section 1. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to deny application or modify, suspend or terminate benefits under any MCH Program for the following reasons:

- (a) The applicant/client is not a bona fide resident of the State;
- (b) The applicant fails or refuses to provide documentation of residency;
- (c) The applicant/client fails or refuses to submit, within a required time frame, a financial status report for the purpose of determining reimbursement obligation/co-pay liability;
- (d) The applicant/client fails or refuses to apply for benefits from other payment sources;
- (e) The applicant/client submits false statements of fact designed to enhance that person's eligibility status for MCH Program benefits;
- (f) The applicant/client fails to meet financial and/or medical eligibility requirements;
- (g) The applicant/client refuses to reimburse the Program after being notified of third party benefits or recipient reimbursement obligation;
- (h) The applicant/client notifies the Program that MCH benefits are no longer required;
- (i) The client is requesting and/or receiving services from a provider who is not enrolled in MCH;
 - (i) The applicant/client fails to file application in a timely manner;
 - (k) The applicant/client submits false claims to the MCH Program;
- (I) The applicant/client has not complied with the MCH approved medical treatment plan;
 - (m) The funds allocated for payment on behalf of the client are exhausted;
 - (n) The CSH client reaches their 19th birthday;

- (o) The client dies;
- (p) The day an MHR client completes genetic testing; or
- (q) The day an MHR/NBIC client is discharged from a tertiary care facility.

Section 2. <u>Procedure for the Denial of Applications; Modification, Suspension, or Termination of Benefits.</u>

- (a) Any applicant for (MCH) Program benefits will be notified in writing if their application has been denied. The notification will state the reasons for denial and the right to request a hearing.
- (b) Any recipient of benefits from the MCH Program will be notified if benefits are to be modified, suspended or terminated. Notification will be by mail (with forwarding address requested), to the most recent address known to the Program. The notice shall contain the reasons for the intended action, as well as the contestant's right to a hearing and the method by which a hearing may be obtained.
- (c) These procedures do not apply to adjustments made by the MCH Program in the type of Program benefits or the amount of benefits available when such adjustments are applied to all clients in order to conform to budgetary limitations or legislative mandate.

CHAPTER IV

MATERNAL AND CHILD HEALTH PROGRAM HEARING PROCESS

Section 1. Statement of Purpose.

These rules and regulations are adopted to implement the Division's authority to allow appeal by any applicant/client, aggrieved by the Maternal and Child Health Program's decision to deny an application, or modify, suspend, or terminate benefits.

Section 2. Notice to Contestant of Right to a Hearing.

- (a) The Division must inform every applicant in writing:
 - (i) Of the right to a hearing;
 - (ii) Of the method by which a hearing may be obtained; and
- (iii) That representation may be by self, or use of legal counsel, a relative, a friend, or other spokesperson.
 - (b) The Division must provide the above hearing information:
 - (i) At the time of any action affecting benefits.
 - (ii) At the time the person applies for benefits; and
 - (iii) At the time of any action affecting his claim.
- (c) The Division must mail a notice at least ten (10) days before the date of action, unless an exception exists. The notice must contain:
 - (i) A statement of the intended action;
 - (ii) The reasons for the intended action;
- (iii) The specific regulations that support, or the change in Federal or State law or regulation that requires, the action;
 - (iv) An explanation of:
 - (A) The individual's right to request a hearing; or
- (B) In cases of action based on a change in law or regulation, the circumstances under which a hearing will be granted; and
- (C) The circumstances under which benefits may be continued if a hearing is requested.

- (d) The Division may mail notice not later than the date of action if:
- (i) The Division has factual information confirming the death of a client;
 - (ii) The Division receives notification that a client:
 - (A) No longer requires services; or
- (B) Gives information that requires termination or reduction of services;
- (iii) The client has been admitted to an institution and is ineligible under the plan for further services;
- (iv) The client's whereabouts are unknown and the post office returns agency mail indicating no forwarding address;
- (v) The Division establishes the fact that the client has been accepted for benefits by another local jurisdiction, State, territory, or commonwealth; or
- (vi) A change in the level of medical care is prescribed by the client's physician.

Section 3. <u>Administrative Hearing Availability</u>.

- (a) Hearings shall be available to the following aggrieved party when all other requirements are met:
- (i) A person requesting or receiving services or benefit administered by the Division; or
 - (ii) A representative of the above.
 - (b) Hearings may be requested on the following Division actions:
- (i) Failure to act on an application in a timely manner as specified in the service or Program rules and regulations;
- (ii) Denial, modification or termination of a service or Division benefits; and
 - (iii) Violations of rights under Title VI of the Civil Rights Act of 1964.

Section 4. Request for Hearing.

(a) Any client or their representative may make a request to the Division in writing, for a hearing.

- (b) Any unclear request for a hearing shall be clarified by the contestant upon request by the Division. The contestant shall be assisted in putting the request in writing, if needed.
 - (c) The request shall contain at least:
- (i) The name, address, and telephone number of the person requesting the hearing; and
- (ii) The reason for the request, including the nature of the Division action, order, or determination being contested.
- (d) The request shall be mailed or personally delivered to the Division within 30 days of the date the notice of action was sent or delivered to the contestant.
- (i) The written response must be delivered to the address listed on the Division letterhead.
- (ii) The Division shall evaluate the request and, within 20 days of receipt of the request:
- (A) Give notice to the requesting party that a favorable determination has been made and specify the action to be taken by the Division; or
- (B) Give notice to the requesting party that a contested hearing will be held at a specified time, date and place.

Section 5. <u>Maintaining Services</u>.

- (a) If the Division mails the ten (10) day notice (Section 2.c) as required above, and the contestant requests, in writing, a hearing before the date of action, the Division may not terminate or reduce services until a decision is rendered after the hearing.
- (b) If the Division's action is sustained by the final decision, the agency may institute recovery procedures against the applicant or client to recoup the cost of any services furnished.

Section 6. Local Conference.

- (a) A local conference shall be offered to determine if the issue can be resolved informally.
 - (b) The contestant shall be advised that:
 - (i) The local conference is optional, and
 - (ii) It does not delay or replace the contested hearing, and
 - (iii) It may be attended by the worker who took the action, the program

manager or their supervisor and the contestant and/or representative.

- (c) The contested hearing shall still be held unless the contestant withdraws the request in writing.
- (d) The local conference shall be conducted within two (2) working days of the request, unless the contestant wishes a later conference, or the contestant withdraws the request in writing.

Section 7. Applicability.

Administrative hearings within the Division of Community and Family Health shall be conducted in accordance with these rules, unless specifically provided otherwise by statute, unless this procedure would conflict with federal regulations.

Section 8. Notice of Hearing.

- (a) In any contested case, the Director shall afford reasonable notice of the hearing to all parties.
- (i) Reasonable notice, as used in this section, shall be not less than 20 days prior to the hearing date. The time period specified herein may be waived by the contestant upon written or oral notification to the Department. Where notification of waiver is made orally it shall be reduced to writing by the Department and entered in the contestant's record.
- (ii) Notice shall be served personally or by certified mail to the last known address of the party.
- (b) A notice of hearing shall contain, at least, the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is being held; the particular sections of the statutes or rules involved; a short and plain statement of the matters asserted; the docket number assigned to the case; the right to be represented by an attorney; availability of legal aid; and the right to a hearing.
- (i) If the Respondent is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon request of any party, a more definite and detailed statement shall be furnished within ten (10) days of receipt of that request by the party.
- (ii) Upon request by the party served, the hearing officer shall, upon a showing of good cause, allow the party an alternative time and place for the hearing, provided such request is made within ten (10) days of receipt of the notice of hearing. When such a request is granted, the Director or his designee shall reissue the notice in accordance with these rules except that reasonable notice as used in this subsection shall be five (5) days prior to the hearing date.
- (A) Only one (1) request for rescheduling of a hearing shall be honored unless, in the hearing officer's judgment, additional changes must be allowed to

avoid manifest injustice. Notice shall be issued as provided by Section 8(a)(ii) above.

(B) A hearing shall be held within 90 days of the Division action which gives rise to the complaint, unless otherwise provided by law.

Section 9. Procedural Rights of Contestant.

The contestant, or his representative, must be given the opportunity to:

- (a) Examine at a reasonable time before the date of the hearing and during the hearing:
 - (i) The content of the contestant's case file; and
- (ii) All documents and records to be used by the Division at the hearing.
- (b) Bring witnesses, establish all pertinent facts and circumstances, present an argument, and question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

Section 10. Failure to Appear.

If a contestant fails to appear at the place, date, and time specified in a notice, the hearing officer may, within his discretion:

- (a) Continue the hearing to a later date and provide proper notice as prescribed in these rules; or
- (b) Proceed to conduct the hearing without the contestant and dispose of the contested case as provided, unless prohibited by Federal or State statute; or
 - (c) Deny or dismiss a hearing if:
 - (i) The contestant withdraws the request in writing; or
- (ii) The contestant fails to appear at a scheduled hearing without good cause.
- (A) Good cause shall be determined by considering circumstances which are beyond the contestant's control, such as illness, illness of another household member requiring the presence of the contestant, a household emergency or other such circumstances that the hearing officer determines were beyond the contestant's control.

Section 11. Discovery.

All discovery in a contested case shall be governed by the Wyoming Rules of Civil Procedure, as described in the W.S. 16-3-107 (g) and (h). The party for whom any depositions are taken will ensure that the original transcripts are placed in the record by

filing them with the Director or his designee. All other records of discovery shall likewise be filed with the Director or his designee by the party originating such discovery.

Section 12. <u>Prehearing Conference</u>.

- (a) At a time on or before the day of the hearing, the hearing officer, on his own or either party's motion, may meet with the parties for a conference to consider simplification of the issues, stipulations and admissions of fact, clarification or limitation of evidence, and any other matters that may expedite the proceeding and assure a just conclusion of the case.
- (b) Any stipulations, limitations or agreements made at a prehearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent manifest injustice.

Section 13. Informal Disposition.

Settlement of a contested case by any informal means (i.e. stipulation, agreed settlement or consent order) shall be allowed at any time, unless precluded by law. Such settlements shall be in writing by both parties and included as a part of the record. The Director or assigned designee shall enter an order dismissing the contested case proceeding upon such settlement, and such order shall be considered a final order of the Department that is not appealable.

Section 14. <u>Hearing Officer</u>.

- (a) The Director or assigned designee shall appoint a hearing officer to preside over contested case hearings on a case-by-case basis, or for a scheduled period of time, as seen fit.
- (b) The hearing officer shall be an employee of the Department, or other individual determined by the Director to be qualified to serve in such a capacity, who has not taken part in the investigation, preparation, or earlier disposition of the case to be heard.
- (i) The hearing officer shall withdraw from consideration of a case at any time he/she deems himself/herself disqualified providing there are other qualified presiding officers available to act. Withdrawal shall be made in writing to the Director.
- (ii) Any party may request in writing that the Director remove and replace the hearing officer in a contested case. This request must be accompanied by a statement and affidavits, setting forth the alleged grounds for disqualification. The Director may deny a party's request for removal and shall issue a written statement

explaining the grounds for the denial, which shall be made a part of the record. If the request is granted, the Director shall appoint a new hearing officer.

(iii) The contestant may object to the appointment of the hearing officer in the record at the hearing. The objection shall set forth the alleged grounds for

disqualification.

- (c) The hearing officer shall have all powers necessary to conduct a fair and impartial hearing, including but not necessarily limited to, the following authority:
 - (i) To administer oaths and affirmations;
- (ii) To subpoen witnesses and require the production of any books, papers or other documents relevant or material to the inquiry.
 - (iii) To rule upon offers of proof and relevant evidence;
 - (iv) To provide for discovery and determine its scope;
 - (v) To regulate the course of the hearing;
- (vi) To hold conferences for the settlement or simplification of the issues;
 - (vii) To dispose of procedural requests or similar matters;
 - (viii) To take any other action authorized by these rules;
- (ix) Make recommended decisions when directed to do so by the Department.
- (d) Except to the extent required for the disposition of ex parte matters authorized by law, the hearing officer shall not consult with any individual or party on any fact at issue except as allowed in W.S. 16-3-11.

Section 15. Evidence and Testimony.

- (a) Except as may be otherwise ordered by the hearing officer, the contestant bears the burden of proof.
 - (b) Admissibility of evidence:
- (i) The parties shall be entitled to present any oral or documentary evidence, submit rebuttal evidence and conduct cross-examinations, as may be required for a full disclosure of the facts. All documentary or physical evidence submitted for consideration shall be marked as exhibits. Respondent's exhibits shall be marked by letters of the alphabet beginning with "A". Contestant's exhibits will be marked by numbers beginning with "1".
- (ii) The hearing officer shall allow any oral or documentary evidence, except that he may exclude irrelevant, immaterial, or unduly repetitious evidence.
 - (c) Objections:

- (i) The grounds for objection to any evidentiary ruling by the hearing officer shall be briefly stated. Rulings on all objections shall appear in the record. Only those objections made before the hearing officer, or specifically stipulated to by both parties, may be relied on in a subsequent proceeding.
 - (ii) Formal exception to an adverse ruling is not required.
 - (d) Privileged and confidential information:
- (i) Any privilege at law shall be recognized by the hearing officer in considering evidence.
- (ii) No employee of the Department shall be compelled to testify or to divulge information which is confidential or privileged at law and which is contained within the records of the Department or acquired within the scope of his employment except as provided in W.S. 16-3-107.
- (e) The hearing officer may take official notice of any material fact not appearing in evidence in the record that is of the nature of traditional matters of judicial notice or within the special technical knowledge or files of the Department. Parties shall be given an opportunity to contest matters judicially noticed prior to a final decision by the Department in accordance with W.S. 16-3-l08.
- (f) Each witness who is present to give testimony will identify their self by stating their name and address, indicate on whose behalf they will testify, and be administered the following oath by the hearing officer: "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"

Section 16. Representation.

- (a) All parties have a right to represent themselves, to be represented by an attorney licensed to practice law in Wyoming, or any other person chosen by the contestant to appear on their behalf. If the contestant is represented by an attorney, payment of attorney's fees and cost are the responsibility of the contestant. Contestant may be eligible for legal services available through the Legal Services Corporation if they meet the applicable guidelines of that agency.
- (i) Only the contestant, their attorney, or their representative may examine or cross-examine witnesses.
 - (ii) The hearing officer may examine witnesses.
- (b) Respondent may request the Attorney General to assist in contested case hearings to the extent required by W.S. 16-3-112(c).

Section 17. Order of Procedure.

(a) As nearly as practicable, the following order of procedure shall be followed:

- (i) The hearing officer shall announce the hearing is open and call by docket number and title the case to be heard. The hearing officer shall ask if parties are ready to proceed and will allow parties an opportunity to dispose of any preliminary matters.
- (ii) The hearing officer shall administer the oath to all witnesses who will present testimony.
- (iii) The hearing officer may, in his/her discretion, allow evidence to be heard in an order other than that prescribed here.
- (iv) Opening statements may be made, contestant first, then respondent.
- (v) Evidence will be heard, contestant first, then respondent. Contestant may then offer rebuttal evidence. Parties may each exercise the right to cross-examine.
- (vi) No testimony shall be received by the Hearing Officer unless given under oath/affirmation administered by the Hearing officer.
- (vii) Closing statements may be made, contestant first, then respondent, then the contestant in rebuttal.
- (viii) The hearing officer may limit the time for opening and closing statements.
 - (ix) The hearing officer may recess the proceedings as appropriate.
- (x) After all parties have had an opportunity to be heard, the hearing officer shall excuse all witnesses and close the evidence.
- (A) Evidence may be reopened only upon a motion by a party to the proceeding on a showing of good cause.
- (b) Within ten (10) working days of the close of the hearing, or such additional time as the hearing officer may allow, each party shall be allowed to file with the hearing officer any proposed findings of fact and conclusions of law, together with a supporting brief. Such proposals and briefs shall be served on all other parties.

Section 18. Decisions.

(a) The hearing officer shall make proposed findings of fact and conclusions of law within 20 working days of the close of the hearing and forward them to the Director for final determination. This time may be extended if the parties or other interested persons are to submit briefs; but, in no event may this time be extended by more than ten (10) working days, unless a later date is stipulated, in writing, by contestant and respondent.

- (b) Within ten (10) working days of receipt of the hearing officer's proposed findings of fact and conclusions of law, the Director or assigned designee will make and enter in the record the final decision in the case. This decision shall be made and served on all parties of the proceeding. The decision shall include:
- (i) A statement of the findings of fact and conclusions of law, stated separately, with a concise and explicit statement of the underlying facts supporting the findings; and
- (ii) The appropriate rule, order, relief or denial thereof. The decision shall be based upon a consideration of the whole contested case record or any portion stipulated to by the parties. The decision shall state all facts officially noticed and relied upon as provided by statute. It shall be made on the basis of a preponderance of evidence contained in the record.
- (c) Final decisions of the Department shall be effective immediately after being entered in the record and served upon all parties. Service shall be accomplished either personally or by mailing a copy of any decision or order to each party or to his/her attorney of record within a reasonable time following the entry of the decision into the record.

Section 19. Appeals.

(a) Appeals from a final decision of the Department shall be taken in accordance with W.S. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

Section 20. <u>Transcripts and Record</u>.

- (a) When a contested case is set for hearing, the Director or assigned designee shall assign a docket number to each case and enter the case with its number and date of filing in a docket book maintained by the Director or assigned designee. The Director or his assigned designee shall maintain a separate file for each docketed case in which all pleadings, transcripts, correspondence, papers, and exhibits for that case shall be maintained. All such items shall have noted thereon the assigned docket number and the date of filing.
- (b) The Department shall record all contested case proceedings electronically, through the use of a qualified court reporter or any other appropriate means determined by the agency, or the hearing officer. Transcriptions of oral proceedings or written transcripts of a witness's testimony may be obtained by contestant upon payment of the cost.
- (i) In a non-public investigatory proceeding, requests for copies or transcripts may be limited to testimony of the requesting party.
- (ii) Where contestant can demonstrate that he/she is indigent and that he/she cannot effectively perfect his/her appeal without such transcription the Department may waive the payment of the fee.

- (c) The record of the hearing shall contain:
- (i) All formal or informal notices, pleadings, motions, intermediate rulings;
- (ii) Evidence received or considered, including matters officially noticed;
 - (iii) Questions and offers of proof, objections and rulings;
 - (iv) Any proposed findings and exceptions thereto; and
- (v) The report of the hearing officer to the Director and the final decision of the Director.